

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH L. NASH,

Plaintiff,

v.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. C04-5161FDB/KLS

ORDER DENYING MOTIONS FOR
JOINDER AND TO AMEND
COMPLAINT

This 42 U.S.C. § 1983 civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court are Plaintiff's motions for joinder (Dkt. # 227) and to amend the complaint (Dkt. # 232). Defendants oppose the motions on the grounds that permitting joinder and amendment at this late date in the litigation is futile and would unduly prejudice them. The Court agrees, and for the reasons stated herein, finds that the motions should be denied.

I. Factual and Procedural Background

Plaintiff alleges that Defendant Doug Waddington, the Superintendent of Stafford Creek Corrections Center (SCCC), violated his right to access the courts when he was denied access to the law library and his legal materials for a sixty day period in 2002. (Dkt. # 4). Plaintiff originally attempted to sue Dan Van Ogle and Elizabeth Tiapula, but failed to name them in the caption or provide their addresses for service. On May 17, 2004, Plaintiff filed an Amended Complaint. (Dkt. # 11). Again, Plaintiff apparently intended to name Elizabeth Tiapula and Dan Van Ogle as Defendants, but failed to provide addresses or properly name them as Defendants. *Id.* Plaintiff did

1 granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is
2 futile, or creates undue delay.” Martinez v. Newport Beach City, 125 F.3d 777, 786 (9th Cir. 1997).

3 A proposed amendment that necessitates reopening discovery or that creates the need for
4 further discovery causes undue prejudice to the opposing party. Lockhead Martin Corp. v. Network
5 Solutions, Inc., 194 F.3d 980, 986 (9th Cir. 1999). The Court finds that plaintiff’s motion to amend
6 his complaint should be denied as untimely, prejudicial and because it will cause undue delay in the
7 disposition of this case.

8 The discovery cutoff date in this case was September 8, 2006 and the parties have completed
9 discovery. The addition of new parties will necessarily require the reopening of discovery, thus
10 delaying these proceedings unnecessarily. *See*, Lockhead Martin Corp. v. Network Solutions Inc.,
11 194 F.3d 980, 986 (9th Cir. 1999) (a need to reopen discovery and delay in proceedings supports
12 finding that amendment would prejudice opposing party). The dispositive motion deadline of
13 October 5, 2006, a date which the parties appear to have met in a timely manner, has also passed.
14 Permitting an amendment which brings in additional parties at this late date after the parties have
15 already engaged in extensive motions practice will also unduly delay this case and impose an unfair
16 burden on Defendants.

17 Although the amendment rules are liberal, they do not require that courts indulge in futile
18 gestures. Deloach v. Woodley, 405 F.2d 496, 497 (5th Cir. 1968). If a proposed amendment could
19 not withstand a motion to dismiss, a court is justified in denying a motion to amend the pleadings
20 made pursuant to Rule 15(a). Jones v. Community Redevelopment Agency of City of Los Angeles,
21 733 F.2d 646 (9th Cir. 1984); Glick v. Koenig, 766 F.2d 265 (7th Cir. 1985). Plaintiff has not
22 provided the Court with a proposed amended complaint. It appears, however, that his proposed
23 amendments are limited to the addition of Defendant Waddington, Dan Van Ogle and Dennis Dahne.
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1 Plaintiff states that the addition of these parties has been made necessary by information discovered
2 during discovery but Plaintiff does not state what information was discovered. The Court will
3 address each of the proposed Defendants in turn.

4 As to Defendant Waddington, Plaintiff's claims against Defendant Waddington have already
5 been adjudicated in this Court and were dismissed from this litigation. Therefore, Plaintiff's sole
6 remedy at this stage in the litigation vis-a-vie Defendant Waddington is to appeal the decision of this
7 Court.

8 As to Plaintiff's attempts to join Dan Van Ogle, Plaintiff was aware that Dan Van Ogle was
9 involved with the events of 2002, as he initially listed him in his Complaint in March 2004. In
10 considering Plaintiff's previous motion to amend, Plaintiff indicated that it was his wish not to add
11 C.U.S. Van Ogle but only to add Defendant Tiapula. (Dkt. # 57). Plaintiff's attempt to add Mr.
12 Van Ogle now is untimely and insupportable.

13 Finally, as to Sergeant Dennis Dahne, Plaintiff has provided the Court with no proposed
14 amended Complaint and Defendants speculate that Plaintiff seeks to add Sergeant Dahne because he
15 signed a response to a kite that Mr. Nash sent to the law library. Sgt. Dahne requested that Plaintiff
16 provide him with a court date to receive legal access in the IMU. (Dkt. # 11, Exh. G). Defendants
17 argue that the kite signed by Sgt. Dahne was provided by Plaintiff with his original Complaint and
18 therefore, Plaintiff should have been aware of Sgt. Dahne and his possible involvement in the events
19 surrounding this lawsuit at the time he filed his original pleading. In addition, Defendants argue that
20 there was no new information received during discovery that would make Sgt. Dahne's involvement
21 more clear than his signature on the kite in question.¹

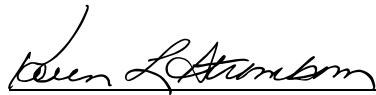
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25 ¹Defendants also argue that Plaintiff's attempt to join Sgt. Dahne is futile because he cannot
26 state a claim against him for the same reasons he could not state a claim against Defendant

1 The record reflects that Plaintiff was aware or should have been aware of Sgt. Dahne's
2 possible involvement in the events surrounding this lawsuit at the time he filed his original pleading.
3 Adding Sgt. Dahne as a party at this late stage of the litigation will result in prejudice and will
4 unnecessarily delay these proceedings as discovery and motions practice are reopened to address the
5 issues surrounding Sgt. Dahne's alleged involvement, when these issues should rightfully have been
6 addressed at the outset of this litigation. Plaintiff's failure to articulate the newly discovered
7 information which purportedly supports the need for his amendment also leads the Court to conclude
8 that his motions for joinder and amendment should be denied.
9

10 III. CONCLUSION

11 Accordingly, Plaintiff's motion to join additional parties (Dkt. # 227) and to amend his
12 Complaint (Dkt. # 232) are **DENIED**. The Clerk is directed to send copies of this Order to Plaintiff
13 and to counsel for Defendants.
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15 DATED this 31st day of October, 2006.

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18 Karen L. Strombom
19 United States Magistrate Judge
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22 Waddington. Defendant Waddington was dismissed from this lawsuit because his decision to uphold
23 the decisions of SCCC staff was found to be reasonable as no SCCC staff were ever provided with a
24 verifiable court deadline by Plaintiff. Thus, Defendants argue adding additional SCCC staff to this
25 lawsuit can be nothing but futile because it does not change the underlying circumstances
26 surrounding Plaintiff's claims. As the Court has no proposed allegations before it and finds the
untimeliness of Plaintiff's joinder attempt sufficient reason for denial, it need not engage in such
speculation.